

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

KEVIN ROBERTS,)	No. ED CV 08-01590-VBK
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER
v.)	
)	(Social Security Case)
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issues:

1. Whether the Administrative Law Judge ("ALJ") properly

1 disorders, meet various Listings, including §§12.03, 12.08 and 12.09.¹
2 (AR 12-13.) The ALJ found, however, that if Plaintiff stopped his
3 substance abuse, his remaining limitations would not meet any of the
4 Listings. It was further found that if Plaintiff stopped his
5 substance abuse, he would have mild restrictions in activities of
6 daily living ("ADL"); mild to moderate difficulties with social
7 functioning; mild difficulties with concentration, persistence or
8 pace; and no episodes of decompensation. (AR 13.)

9 The ALJ further found that if Plaintiff stopped his substance
10 use, he would have the residual functional capacity ("RFC") to perform
11 a full range of work at all exertional levels with the following non-
12 exertional limitations: simple, four to five step instructions in an
13 object oriented setting involving no safety operation and no operation
14 of hazardous machinery. (AR 14.)

15 The ALJ's review of the records indicated that Plaintiff was
16 incarcerated in 2004 on a charge of drug possession, with a diagnosis
17 of schizophrenia, paranoid, chronic and that his symptoms, primarily
18 auditory hallucinations, were controlled with medication. (AR 14.)
19 After his parole in early 2005, Plaintiff's GAF was 75, and then 60,
20 although in November 2005, the ALJ noted that Plaintiff reported use
21 of amphetamines and marijuana and also an old prescription rather than
22 his prescribed medication. This drug use was paralleled with an
23 increase in auditory hallucinations and paranoid ideation. (AR 15,
24 citing AR 323.) It was further noted that when Plaintiff was seen at
25 the San Bernardino County Department of Behavioral Health, he admitted
26 to drug abuse as recently as October 2007 with increased auditory
27

28 ¹ There is no Listing for 12.09.

1 hallucinations and paranoid delusions. He reported decreased auditory
2 and visual hallucinations and paranoid ideation through February of
3 2008, and then denied any paranoid ideation in March 2008, indicating
4 minimal problems with hallucinations. (AR 15, citing AR 341-343.)

5 Summarizing this medical evidence, the ALJ found the following:

6 "In terms of [Plaintiff's] alleged hallucinations and
7 delusions, there is no reason to doubt that [Plaintiff] has
8 problems with them when he abuses drugs and alcohol. The
9 medical evidence of record however shows a pattern of
10 remission and recurrence related to abstinence from
11 substance abuse and compliance with the prescribed
12 treatment."

13 (AR 15.)
14

15 The ALJ disagreed with a consultative psychiatric examiner's
16 finding that Plaintiff's substance abuse is secondary to an underlying
17 psychotic disorder, for the stated reason that Plaintiff "has had good
18 control of his symptoms when compliant with prescribed treatment with
19 no indication he needs at that point to 'self-medicate' with alcohol
20 and illicit drugs..." (AR 15.) The ALJ gave greater weight to the
21 findings of the testifying ME "that the record as a whole only
22 establishes a psychotic disorder, not otherwise specified, secondary
23 to the [Plaintiff's] substance abuse." (Id.) Moreover, the ALJ did
24 not disagree with the findings of the treating psychiatrist that
25 Plaintiff has been permanently and totally disabled since December
26 2007, noting that, "This is not inconsistent with the findings herein
27 above regarding the severity of the [Plaintiff's] impairments if his
28 substance abuse is considered in combination with his other mental

1 impairments." (Id.)

2 Thus, the opinion of Plaintiff's treating psychiatrist as to
3 disability was not a matter of disagreement for the ALJ; rather, the
4 treating psychiatrist failed to account for the effect of substance
5 abuse on the underlying mental health problems, although the treating
6 psychiatrist's notes reflect that Plaintiff used methamphetamine in
7 October 2007, and diagnosed a dependence on amphetamine and marijuana.
8 (AR 350, 354.)

9 Where drug addiction or alcoholism is a contributing factor
10 material to the determination of disability, payment of benefits is
11 prohibited. 42 U.S.C. §423(d)(2)(C); 42 U.S.C. §1382c(a)(3)(J). The
12 key factor in making the determination whether drug addiction or
13 alcoholism is a contributing factor material to the determination of
14 disability is whether the Commissioner would still find the plaintiff
15 disabled if he stopped using drugs or alcohol. 20 C.F.R.
16 §§404.1535(b), 416.935(b). If the Commissioner finds that the
17 plaintiff's remaining limitations, absent the drug or alcohol
18 addiction, would not be disabling, the Commissioner will find that
19 drug addiction or alcoholism is a contributing factor material to the
20 determination of disability and deny benefits. 20 C.F.R. §§404.1535
21 (b)(2)(i), 416.935 (b)(2)(i); see also Sousa v. Callahan, 143 F. 3d
22 1240, 1245 (9th Cir. 1998).

23 Plaintiff fails to demonstrate why the ALJ was incorrect in
24 determining that Plaintiff's substance abuse has a primary impact upon
25 the existence of a disabling mental impairment. It is not a matter of
26 the ALJ disregarding the opinion of the treating physician; rather,
27 the fact is that Dr. Chasuthipian failed to account for the effect of
28 Plaintiff's substance abuse on his mental impairment, simply finding

1 that the mental impairment itself was disabling. Under Social
2 Security law, however, it is the Commissioner's responsibility to
3 determine whether, absent the drug or alcohol addiction, the mental
4 impairment would be disabling. For that reason, the Court finds no
5 error with regard to Issue One.

6 With regard to Plaintiff's argument regarding the ALJ's failure
7 to account for Plaintiff's GAF score, the GAF scale is intended to
8 reflect a person's overall level of functioning at or about the time
9 of the examination, not for a period of at least 12 consecutive
10 months, which is required for a finding of impairment or disability.
11 (See 20 C.F.R. §§416.905, 416.920(c)(2006).)

12 GAF scores are intended to be used for clinical diagnosis and
13 treatment, and do not directly correlate to the severity assessment
14 set forth in Social Security regulations. (See Revised Medical
15 Criteria for Evaluating Mental Disorders and Traumatic Brain Injury,
16 65 Fed. Reg. 50746, 50764-65 (Aug. 21, 2000), and American Psychiatric
17 Ass'n, Diagnostic and Statistical Manual of Mental Disorders, Text
18 Revision 33 (4th Ed. 2000).

19 For the foregoing reasons, there is no error with regard to the
20 issue of Plaintiff's GAF score.

21 22 II

23 THE ALJ PROPERLY CONSIDERED THE CONSULTATIVE EXAMINING

24 PSYCHIATRIST'S OPINION

25 In Plaintiff's second issue, he asserts that the ALJ did not
26 correctly evaluate the psychiatric consultative evaluation ("CE")
27 opinion of Dr. Kikani.

1 Dr. Kikani examined Plaintiff on January 17, 2008.² Dr. Kikani
2 diagnosed Plaintiff as suffering from schizophrenia, paranoid type,
3 and indicated he has been psychiatrically ill since about 1996. (AR
4 338.) Dr. Kikani assessed a GAF score of 50. Further, he diagnosed
5 Plaintiff as having a history of polysubstance abuse secondary to the
6 underlying psychotic disorder. (AR 338.) This conclusion was
7 rejected in whole by the ALJ, who found that it was not supported by
8 evidence of record "since the [Plaintiff] has had good control of his
9 symptoms when compliant with prescribed treatment ..." (AR 15.)

10 Finally, Plaintiff asserts that the ALJ failed to take note of
11 the fact that Plaintiff suffers from serious side effects, such as
12 day-time sedation, from the prescribed medications. (JS at 10, citing
13 AR 321, 323, 324.)

14 The Court has already discussed the lack of relevance of GAF
15 scores in the disability analysis, in its denial of relief as to
16 Plaintiff's first issue, and that discussion need not be repeated.

17 With regard to side effects of psychotropic medications, while
18 Plaintiff cites several instances where he reported day-time sedation
19 from his psychotropic medication, he fails to recognize that
20 concurrent mental status examinations indicated no abnormalities. For
21 example, Plaintiff cites the report of December 7, 2005, for the point
22 that he suffers from day-time sedation. Yet, on that same date, his
23 mental status examination indicated alertness, full orientation,
24 clear, goal-directed thinking, clear, fluent, spontaneous and not
25 pressured speech, full and appropriate affect, good cooperation,

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27 ² The reference is not made clear in the report, although Dr.
28 Kikani indicates that he obtained information both from Plaintiff and
from DPSS records.

1 intact cognition and memory, good insight, fair judgment, and a denial
2 of delusions. (Id.) The same is true of the other reports cited by
3 Plaintiff for this point. (See AR at 323-324.) Moreover, on many
4 occasions, Plaintiff denied the existence of any side effects from
5 medication. These reports were documented in June 2005, at which time
6 Plaintiff wanted to actually increase his Seroquel dosage (AR 326);
7 November 2, 2005 (AR 323); December 5, 2005 (AR 320-321). Further, on
8 April 1, 2006, Plaintiff alleged hunger as a side effect of his
9 psychotropic medications. (AR 316.) Thus, the medical reports are at
10 best inconclusive, and as such, the ALJ appropriately performed his
11 function to resolve conflicting evidence. See Morgan v. Commissioner,
12 169 F.3d 595, 601 (9th Cir. 1999).

13 Finally, with regard to the asserted secondary nature of the
14 polysubstance abuse to the psychotic disorder, the ALJ appropriately
15 resolved that question by discounting the CE's opinion, much as he had
16 discounted the treating psychiatrist's opinion. (See discussion,
17 infra, Issue One.)

18 Plaintiff again raises the medication side effects issue in his
19 third issue, which the Court has already resolved in connection with
20 his second issue. Thus, no further discussion is necessary with
21 regard to Plaintiff's third issue.

22 Finally, Plaintiff's fourth issue concerns the assertedly
23 incomplete hypothetical question posed to the vocational expert
24 ("VE"). Specifically, Plaintiff contends that the hypothetical
25 question was insufficient because it failed to set forth Plaintiff's
26 mental limitations (Issues One and Two), and side effects of
27 psychotropic medications (Issue Three).

28 A hypothetical question posed to a VE must only contain those

1 medical assumptions which are supported by substantial evidence in the
2 record reflecting Plaintiff's limitations. Osenbrock v. Apfel, 240
3 F.3d 1157, 1163-64 (9th Cir. 2001). Since this Court has sustained the
4 ALJ's analysis of the issues regarding Plaintiff's treating
5 psychiatrist, the CE, and side effects of medication, it follows that
6 no error will be found with regard to omission of these matters in the
7 hypothetical questions posed to the VE.

8 The decision of the ALJ will be affirmed. The Complaint will
9 be dismissed with prejudice.

10 **IT IS SO ORDERED.**

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12 DATED: August 12, 2009

13 /s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE
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